

***United States Court of Appeals  
for the  
District of Columbia Circuit***



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Monday, June 14  
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**BRIEF FOR APPELLEE**

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**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,120

CHARLES GILBERT, APPELLANT

v.

**102**

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF COLUMBIA

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*United States Court of Appeals  
For the  
District of Columbia Circuit*

FILED JUN 2 1954

*Joseph W. Stewart*  
CLERK



QUESTION PRESENTED

In the opinion of appellee, the following question is presented:

Whether, the trial judge properly denied appellant's motion for judgment of acquittal at the conclusion of the Government's case in a prosecution for larceny and unauthorized use of a vehicle, where the evidence conclusively showed a prima facie case for the jury's consideration.



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# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 12,120

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UNITED STATES OF AMERICA, APPELLEE

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*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
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BRIEF FOR APPELLEE

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## COUNTERSTATEMENT OF THE CASE

On October 19, 1953 a two-count indictment was filed in the District Court wherein the first count charged that on or about September 1, 1953, within the District of Columbia, appellant and one George Ward "stole the property of Donald R. Billetts, of the value of \$1350.00 consisting of the following: one automobile truck of the value of \$800.00 and one paint sprayer pump of the value of \$550.00," in violation of District of Columbia Code (1951) § 22-2201; and the second count charged appellant and Ward with Unauthorized Use of a Vehicle in violation of District of Columbia Code (1951), § 22-2204.

On October 23, 1953, appellant entered a plea of not guilty (R. 37) and on November 30, 1953, the case came on for trial before a jury (R. 1). A verdict of guilty on both counts was returned by the jury (R. 38), and appellant was

sentenced to serve a term of imprisonment from two to six years on the first count and from sixteen months to four years on the second count (R. 39).

The evidence adduced at the trial may be summarized as follows:

On behalf of the Government, *Mr. Donald Billetts* testified he was the owner of a 1949 Ford three-quarter-ton pick-up truck; that co-defendant Ward was employed by him as a "spray painter" and that Ward used the truck in the performance of his duties. (R. 5). Billetts testified Ward was laid off during the last part of August, 1953 and did not at this time return the ignition key to the truck. (R. 5, 6).<sup>1</sup> Billetts further testified that, on September 1, 1953 he parked the truck in question opposite 4304 Georgia Avenue, N.W. at about 10 or 10:30 A.M. and when he returned for the truck at 7:30 the next morning it was missing (R. 7); and the next time he saw the truck was later that day when he accompanied the metropolitan police to Emporia, Virginia (R. 9). Billetts testified that in Emporia he discovered a paint sprayer that had been in the truck was also missing (R. 9); and stated that he had not given either Ward or appellant permission to use the truck or to take the paint sprayer (R. 9, 10).

*Detective Sergeant William Shelton* of the Metropolitan Police Department, testified that he investigated a report of a missing 1949 pick-up truck belonging to Billetts (R. 12) in response to a teletype message from the police in Emporia, Virginia, on September 3, 1953, stating that they had in custody two men and a truck. Officer Shelton went to Emporia where he arrested Ward and appellant (R. 13). The officer questioned Ward relative to the paint sprayer missing from the truck and was informed by Ward that he and appellant met an unknown man in Richmond, Virginia,

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<sup>1</sup> "It was on a payday and I was busy paying the other men and he got away from me before I realized he had the key and I never went after him to get the key and he never returned it to me" (R. 6, 11).

who took them to a gas station where they bargained the paint sprayer for "\$5.40 worth of gas, eighty cents worth of oil and a pint of whiskey" (R. 14); but the officer stated "they were unable to tell me which gas station it was" (R. 14). After an extensive "three hour" search with the aid of the local police, the particular gas station was located and the paint sprayer pump was recovered (R. 14).<sup>2</sup>

Sergeant Shelton testified further that Ward said he had been employed by Billetts and that he had been fired a week prior to taking the truck and at the time of his dismissal he kept the key to the truck in his possession (R. 16); that appellant suggested taking the truck to go to North Carolina (R. 16-17); that both he and appellant had been drinking; and that after taking the truck from Georgia Avenue they got as far as Richmond, Virginia when they ran out of gas and at the suggestion of an unknown man they went to the gas station and tried to sell the paint sprayer. (R. 17). The officer related the admissions of Ward, made in the presence of appellant, with respect to the paint spray pump, as follows:

"\* \* \* At the time of his dismissal he kept the key to the truck in his possession and that Gilbert had suggested to him, knowing that he had the key, that they go to Georgia Avenue and take the truck and go to North Carolina. And that they both had been drinking wine and they had been drinking pretty heavily. They both went together to this place on Georgia Avenue and took the truck and proceeded to North Carolina, and when they got into Richmond, Virginia, they met this man where they ran—they ran out of gas and had tried to sell this machine, this man making the suggestion that

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<sup>2</sup> "Q. When you were driving around Richmond looking for the pump, was he [Ward] of any help in finding or being able to locate the gas station?

A. Well, about four gas stations he picked out himself as being the ones he sold it.

Q. None of them were?

A. No. We rode by the station we found it in twice." (R. 20).

they go to this gas station, whom he knew had a friend that they could get rid of the pump \* \* \*'' (R. 16, 17).

Sergeant Shelton said appellant denied having knowledge of the truck being stolen even though Ward insisted appellant knew the truck belonged to Billetts and claimed appellant suggested taking the truck. The sergeant testified further that appellant stated he had known Ward for three years and knew Ward did not own a truck and further explained he wanted to go to North Carolina to get a job and see his wife. (R. 17).

*Detective Sergeant Charles I. Smith* of the Metropolitan Police, testified he interrogated Ward and appellant on September 3, 1953, at police headquarters (R. 22); and Ward, in the presence of appellant, again said appellant knew he had a key to the truck and had suggested getting the truck and going to North Carolina. (R. 22-23). Appellant on this occasion admitted to sergeant Smith that he and Ward had been drinking, that they got the truck but that he waited a block away and Ward picked him up. (R. 23).<sup>3</sup>

*Gordon Barness* testified he was a policeman from Emporia, Virginia and that at 3:30 P.M. on September 2, 1953 he was patrolling the highway when he observed Ward and appellant in a 1949 Ford pick-up truck delaying traffic. He stopped them and asked appellant, who was driving, for his operator's license (R. 26). Appellant stated he did not have a license and when Ward failed to produce an ownership card, officer Barness took them both to police headquarters (R. 27).

*Mr. W. P. Stancil* of Richmond, Virginia, testified Ward and appellant came to his gas station with one I. V. Iron, one of Stancil's customers. He testified they were driving a truck at the time. Stancil said Iron had him fill the truck's tank with gas and had him charge it to Iron's account (R. 30, 31). Iron requested that he leave a paint sprayer,

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<sup>3</sup> On cross examination, officer Smith was asked: "Q. Did Gilbert ever state to you that he knew that Ward took the truck without the permission of Mr. Billetts? \* \* \* A. \* \* \* *Gilbert would never come out and tell me that*" (R. 24) (Emphasis added).

which was in a barrel in the back of the truck, at the station and Stancil told him he could leave it at Stancil's garage which was a few blocks away. (R. 31, 32).

At this point the Government rested (R. 34) and appellant moved for a judgment of acquittal on the grounds that the necessary knowledge and intent had not been proven by the Government. The trial court denied the motion. (R. 35). Appellant did not testify in his own behalf or produce any evidence. The refusal to grant appellant's motion for a judgment of acquittal serves as the basis for this appeal.

#### STATUTES INVOLVED

District of Columbia Code, § 22-2201 provides:

Whoever shall feloniously take and carry away anything of value of the amount or value of \$100 or upward, including things savoring of the realty, shall suffer imprisonment for not less than one nor more than ten years.

District of Columbia Code, § 22-2204 provides:

Any person who, without the consent of the owner, shall take, use, operate, or remove, or cause to be taken, used, operated or removed from a garage, stable, or other building, or from any place or locality on a public or private highway, park, parkway, street, lot, field, inclosure, or space an automobile or motor vehicle and operate or drive or cause the same to be operated or driven for his own profit, use or purpose shall be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding five years, or both such fine and imprisonment.

#### SUMMARY OF ARGUMENT

Under the rule announced in *Curley v. United States*, 81 U. S. App. D. C. 389 (1947) the trial judge properly denied appellant's motion for judgment of acquittal made at the conclusion of the Government's case.

## ARGUMENT

*The Government's evidence was sufficient to take the case to the jury. Consequently, appellant's motion for judgment of acquittal was properly denied.*

Appellant alleges that the government "had not in its evidence produced the necessary proof that the appellant had the necessary guilty knowledge and intent" (Br. 2), and for this reason the trial court erred in its denial of a motion for judgment of acquittal.

In *Curley v. United States*, 81 U.S. App. D.C. 389, 160 F. 2d 229 (1947) *cert. denied* 331 U.S. 837, this Court set forth the criteria which should govern the decision of a trial judge in this jurisdiction in considering a motion for judgment of acquittal (81 U.S. App. D.C. at 392):

It is not disputed that upon a motion for a directed verdict [judgment of acquittal], the judge must assume the truth of the Government's evidence and give the Government the benefit of all legitimate inferences to be drawn therefrom.

And later at 392 and 393:

The true rule, therefore, is that a trial judge, in passing upon a motion for directed verdict of acquittal, must determine *whether upon the evidence*, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, *a reasonable mind might fairly conclude guilt beyond a reasonable doubt*. If he concludes that upon the evidence there must be such a doubt in a reasonable mind, he must grant the motion; or, to state it another way, if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted. If he concludes that either of the two results, a reasonable doubt or no reasonable doubt, is fairly possible, he must let the jury decide the matter. In a given case, particularly one of circumstantial evidence, that determination may depend upon the difference between pure speculation

and legitimate inference from proven facts. The task of the judge in such case is not easy, for the rule of reason is frequently difficult to apply, but we know of no way to avoid that difficulty. (Emphasis supplied.)

And finally at 397:

If the evidence reasonably permits a verdict of acquittal or a verdict of guilty, the decision is for the jury to make. In such case, an appellate court cannot disturb the judgment of the jury.<sup>4</sup>

"Short of training a television camera on the scene, it is difficult to think of anything the prosecuting authorities might otherwise have done to complete the picture of the offense in progress" *Foster v. United States*, — U.S. App. D.C. —, (Case No. 11770, decided April 15, 1954). If appellant knew the truck and sprayer did not belong to Ward and were taken without permission from Billetts, reasonable minds might fairly conclude that he must necessarily have been a participant in the larceny and unauthorized use. The question is therefore, was such knowledge on his part a legitimate inference from the proven facts? The appellee submits that it was.

1. *Larceny Count*. The intent required in larceny is the intent to steal, the intent to convert the property of another to the taker's use. *Brown v. United States*, 35 App. D.C. 548 (1910); *Ryan v. United States*, 26 App. D.C. 74 (1905). As this Court has stated in *Pennsylvania Indemnity Fire Corp. v. Aldridge*, 73 App D.C. 161, 117 F. 2d 774, 776 (1941):

\* \* \* the only rule as to felonious intent in larceny to which all the cases can be reconciled, is that the intent of the taker must be to appropriate the stolen property

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<sup>4</sup> The rule therein prescribed has been reiterated by this Court in *McGuire v. United States*, 84 U.S. App. D.C. 64, 171 F. 2d 136 (1948); *Pritchett v. United States*, 87 U.S. App. D.C. 374, 185 F. 2d 438, cert. denied, 341 U.S. 905 (1950); *Battle v. United States*, 92 U.S. App. D.C. 220, 206 F. 2d 440 (1953); *Thomas v. United States*, — U.S. App. D.C. — (case No. 11,912, decided March 4, 1954).

to a use inconsistent with the property rights of the person from whom it is taken.

Intent, ordinarily, cannot be proven directly, because there is no way of fathoming and scrutinizing the operations of the human mind. Intent may be deduced from circumstances, from things done, and from things said. This recognized rule was stated in *Estep v. United States*, 140 F. 2d 40 (10th Cir. 1943), where the court said (p. 45):

\* \* \* Guilty knowledge or criminal intent is usually a factual question, peculiarly within the province of the jury, and is seldom provable by direct evidence, but must be inferred from facts and circumstances which reasonably tend to manifest a mental attitude.

Looking at the facts and circumstances of the instant case and assuming the truth of the evidence, it is evident that the jury was entitled to draw a legitimate inference of guilty knowledge by appellant from the proven facts. The owner of the truck testified he had not given anyone permission to use the truck. (R. 9). Appellant by his own admissions to the police officers said that he and Ward took the truck from its parking place on Georgia Avenue (explaining he waited a block away where Ward picked him up). (R. 23). The evidence clearly establishes his motive and design, for when the police inquired as to the reason for taking the truck, appellant stated he wanted to go to North Carolina to get a job and see his wife. (R. 27). Appellant was caught driving the stolen truck one day after it was taken from its owner and he failed to prove ownership and did not even have a driver's license. (R. 27). Appellant denied having knowledge of the truck being stolen yet admitted he had known Ward three years and knew he did not own a truck. (R. 17).<sup>5</sup> Certainly from such posses-

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<sup>5</sup> There was some evidence to the effect that appellant had been drinking (R. 23, 33). As this Court has said in *Ryan v. United States*, *supra*, 26 App. D.C. at 81: "That the accused may have been drunk, in the ordinary sense of that word, is not sufficient. He must have been so drunk as to be incapable of forming the intent

sion of the stolen property, the jury might draw a legitimate inference of guilt. *Tractenberg v. United States*, 53 App. D.C. 396, 293 Fed. 476 (1923); *Wright v. United States*, 89 U.S. App. D.C. 70, 189 F. 2d 699 (1951); *Wilson v. United States*, 162 U.S. 613 (1896).<sup>6</sup>

The jury might also fairly and legitimately infer as a fact from the proven facts the intent of appellant to use the paint sprayer "inconsistent with the property rights of the person from whom it is taken." The owner of the paint sprayer testified he had not given anyone permission to take the sprayer (R. 10) and appellant did not dispute his companion Ward's statement to the police that the pair tried to sell the sprayer and finally gave it to a gas station operator in return for gas, oil and whiskey. (R. 14, 17). Certainly the jury could infer criminal intent from those circumstances. Hence, the trial court was correct in refusing to grant the motion for judgment of acquittal.

2. *Unauthorized Use Count.* Appellant was also charged with unauthorized use of a vehicle under § 22-2204 of the District of Columbia Code (1951) which provides, in pertinent part, as follows:

Any person who, without the consent of the owner, shall take, use, operate or remove, \* \* \* an automobile or motor vehicle, and operate or drive \* \* \* the same \* \* \* for his own profit, use, or purpose shall be punished \* \* \*

Violation of this statute involves only a "general criminal intent," which may be presumed from doing the pro-

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to steal; that is to say, incapable of consciousness that he is committing a crime,—incapable of discriminating between right and wrong."

<sup>6</sup> In the *Tractenberg* case the defendant, as in the instant case, was found guilty of theft of an automobile. This Court in upholding the conviction said (59 App. D.C. at 398): "The possession of this stolen automobile by the defendant, almost immediately following the theft, was an evidential fact tending to establish his guilt, and the court submitted that to the jury in connection with all the other facts and circumstances disclosed by the evidence."

hibited act. *Proctor v. United States*, 85 U.S. App. D.C. 431, 177 F. 2d 656 (1949).

In addition, the prima facie rule applicable to unexplained possession of recently stolen property can be applied with equal force in a charge of unauthorized use when the appellant is found in possession of the vehicle that was illegally taken. *Epps v. United States*, 81 U.S. App. D.C. 244, 157 F. 2d 11 (1946).

An accused is presumed to be innocent and this presumption follows him until a verdict has been reached "but persuasion of guilt beyond a reasonable doubt overcomes the presumption." *Curley v. United States*, *supra*, 81 U.S. App. D.C. at 393. In the principal case it is evident that the evidence was such that a "reasonable mind might fairly conclude guilt beyond a reasonable doubt." The owner of the truck testified he had not given anyone permission to use the truck. Appellant and his companion admittedly took the truck from its parking place. One day after the truck was reported stolen, appellant was observed driving the truck and he failed to prove ownership and failed to account for his possession in a satisfactory and truthful way that would stamp it as an honest accounting. Appellant admitted that he knew his companion Ward did not own the truck and he did not dispute Ward's statements that it was appellant's idea in the first place to take the truck. The evidence clearly reveals his purpose as appellant admitted wanting to take the truck to North Carolina in order to see his wife and get a job.

Considering all these facts and circumstances and drawing all legitimate inferences, the intent to commit the crime was plain. Therefore, the trial court rightfully refused to grant the motion for judgment of acquittal.

It is noted that on January 15, 1954 appellant was sentenced to serve a term of imprisonment from two to six years on the first count (larceny) and from sixteen months to four years on the second count (unauthorized use), sentences on each count to run concurrently (R. 39). This Court need not consider appellant's objection to the conviction on the second count charging the unauthorized use

of vehicle if they find there is no merit in his objection to the trial court's refusal to direct acquittal on the first count, since the sentence imposed for conviction on the second count is less than the sentence imposed on the first count. *Wanzer v. United States*, — U.S. App. D.C. —, 208 F. 2d 45 (1953).

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court be affirmed.

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